

MONTANA LEGISLATIVE HISTORY

Chapter 170 192001

Bill H _____ S 161

Original bill & history c

H. Committee on Local Gov't

Hearing Date(s) 3/6 ✓ C

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Date Out _____ C

S. Committee on Local Gov't

Hearing Date(s) 1/23 1 C

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Did this bill originate in an interim committee? Yes / No

Committee _____

Report



AN ACT REVISING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW TO ESTABLISH AND ASSESS FEES RELATED TO SOLID WASTE; AUTHORIZING THE DEPARTMENT TO ASSESS PENALTIES FOR LATE OR NONPAYMENT OF ALL SOLID WASTE MANAGEMENT FEES; REPEALING THE QUARTERLY SOLID WASTE MANAGEMENT FEE OF \$5 PER TON ON THE IN-STATE DISPOSAL OR INCINERATION OF OUT-OF-STATE WASTE; REPEALING THE MORATORIUM ON CERTAIN INTERSTATE TRANSPORT OF SOLID WASTE; AMENDING SECTIONS 7-13-231, 75-10-104, 75-10-105, 75-10-106, 75-10-115, 75-10-116, 75-10-117, 75-10-204, 75-10-206, AND 75-10-221, MCA; REPEALING SECTIONS 75-10-118 AND 75-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-13-231, MCA, is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of a solid waste management district, the board shall establish a fee for service, with approval of the county commissioners, provided that a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of the increase is given as provided in 7-13-208(1) and (2) and an opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee must be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of the district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed collected by the department of environmental quality under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed.

(4) In order to aid in the determination of rates for service charges under 7-13-232, the department of revenue shall assist the board by providing the board with information pertaining to new

construction, demolition, remodeling that changes the use of a building, and the location of mobile homes within the district boundaries."

Section 2. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee ~~to which~~ that a facility is subject to under ~~75-10-118~~ 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(f) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(g) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c);

~~(e)(h)~~ (h) providing procedures for the quarterly collection of the solid waste management fee provided for in ~~75-10-118~~ 75-10-204(6); and

~~(f)(i)~~ (i) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system ~~which~~ that is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing financing, and operating;

- (a) a solid waste management system in order to ensure that the system conforms to the state plan;
- (b) integrated waste management programs; and
- (c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in ARM 16.44.402;
- (5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;
- (6) enforce and administer the provisions of this part;
- (7) administer loans made by the state under the provisions of this part;
- (8) approve plans for a proposed solid waste management system submitted by a local government; and
- (9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 3. Section 75-10-105, MCA, is amended to read:

"75-10-105. Powers of department. The department may:

- (1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;
- (2) make loans to a local government for the planning, design, and implementation of a solid waste management system;
- (3) make grants for a local government for planning or implementation of a solid waste management system; and
- (4) collect the solid waste management fee fees provided for in ~~75-10-118~~ 75-10-115."

Section 4. Section 75-10-106, MCA, is amended to read:

"75-10-106. Duties of board. The board shall:

- (1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and
- (2) adopt rules necessary for the implementation of this part, including but not limited to rules

governing the following:

- (a) submission of plans for a solid waste management system;
- (b) the procedures to be followed in applying for and making loans and grants;
- (c) the requirements for eligibility for grants; and
- (d) the agreements between the local government and the department for grants and loans under this part; and
- (e) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Section 5. Section 75-10-115, MCA, is amended to read:

"75-10-115. Solid waste management fee. (1) The department may establish and collect prepare rules for adoption by the board, pursuant to 75-10-104 and 75-10-106, that set fees for the management and regulation of solid waste disposal at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption by the board, the department may collect the fees: These fees may include:

- (a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility;
- (b) an a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal and that is based upon the following formula: categorization of solid waste management systems into separate classes identified by the following criteria:
 - (i) the quantity of solid waste received by the solid waste management system;
 - (ii) the nature of the solid waste received; and
 - (iii) the nature of the waste management occurring within the solid waste management system;
 - ~~(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, \$3,500;~~
 - ~~(ii) for an intermediate facility with a planned capacity of more than 5,000 tons a year but not more than 25,000 tons a year, \$3,000;~~
 - ~~(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, \$2,500; and~~
- (c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117."

Section 6. Section 75-10-116, MCA, is amended to read:

"75-10-116. **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility that is subject to ~~a fee~~ the fees under ~~75-10-118~~ 75-10-115 and who fails to pay the fee in the manner provided by department rule is subject to a fine of not more than \$2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool."

Section 7. Section 75-10-117, MCA, is amended to read:

"75-10-117. **Solid waste management account.** (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management ~~fee~~ fees provided for in ~~75-10-118~~ 75-10-115;

and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source; that is intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of ~~part 2, this part,~~ and 75-2-215, part 2 of this chapter, and this part."

Section 8. Section 75-10-204, MCA, is amended to read:

"75-10-204. **Powers and duties of department.** The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

- (2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;
- (3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;
- (4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;
- (5) requirements relating to ground water monitoring, including but not limited to:
- (a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must be required to submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);
- (b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and
- (c) recordkeeping and reporting;
- ~~(6) fees related to the review of solid waste management system license applications;~~
- ~~(7) the renewal of solid waste management system licenses and related fees;~~
- ~~(8) the imposition of a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;~~
- ~~(9)~~(7) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, and disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;
- ~~(10)~~(8) any other factors relating to the sanitary disposal or management of solid wastes."

Section 9. Section 75-10-206, MCA, is amended to read:

"75-10-206. Variance. (1) ~~Any~~ A person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204~~(8)~~(6). The board may grant a variance if it finds that:

- (a) failure to comply with the rules does not result in a danger to public health or safety; or
- (b) compliance with the rules from which a variance is sought would produce hardship without

producing benefits to the health and safety of the public that outweigh the hardship.

(2) ~~No~~ A variance may not be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) ~~Nothing in this~~ This section may not be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act."

Section 10. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, ~~no~~ a person may not dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application ~~shall~~ must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and ~~such~~ other information as that the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department. ~~The department may provide exceptions to the 12-month requirement for a 2-year period following July 1, 1991.~~

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In preparing rules for board adoption that establish ~~establishing~~ fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and the size of the proposed solid waste management system. The fees adopted by the board must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system."

Section 11. Repealer. Sections 75-10-118 and 75-10-209, MCA, are repealed.

Section 12. Effective date. [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 23, 2001 at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. John C. Bohlinger, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. John Cobb (R)
Sen. Jim Elliott (D)
Sen. Bill Glaser (R)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)
Sen. Ken Miller (R)
Sen. Emily Stonington (D)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 21, 1/16/2001
	SB 144, 1/16/2001
	SB 161, 1/16/2001
	SB 168, 1/16/2001

Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 161

Sponsor: SEN. DON HARGROVE, 16, BOZEMAN

Proponents: Jon Dilliard, Dept. of Environmental Quality
Frank Crowley, Representing the City of Billings
Will Selser, Lewis & Clark County, Solid Waste Association of
Montana (S.W.A.M.)

Opponents: None

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, BOZEMAN gave his opening statement. The tape recorder was not working. The title of his bill was: "An act revising and clarifying the authority of the Department of Environmental Quality and the Board of Environmental Review to establish and assess fees related to solid waste; authorizing the Department to assess penalties for late or nonpayment of all solid waste management fees; repealing the quarterly solid waste management fee of \$5 per ton on the in-state disposal or incineration of out-of-state waste; repealing the moratorium on certain interstate transport of solid waste and amending several sections.". He had stated that this was a clean-up bill. The DEQ had reviewed the original law of 1991 and found duplications and inconsistencies and felt the necessity of making these corrections.

Proponents' Testimony:

Jon Dilliard, Dept. of Environmental Quality (DEQ). He gave his testimony and handed in a copy EXHIBIT(los18a09). He proposed an amendment and handed in a copy EXHIBIT(los18a10).

The tape recorder started to run toward the end of Mr. Jon Dilliard's testimony.

Frank Crowley, Helena. He was representing the City of Billings. As the operator of one of the largest sanitary landfills in the state, the City of Billings does not lightly support an increase in fees from the state. They were assured by the Dept. on how the increased fees would be used. In the next biennium, these increased fees will be devoted to seeking and hiring technical staff that are needed to properly and promptly resolve the complex technical engineering and environmental issues that the new federal and state regulations have prompted for municipal landfills. The City also understands the fees will not be used to fund an expansion. With respect to some of the technical changes, especially the change of using the Board of Environmental Review to adopt the fees, the City believes that the use of this Board does provide a good procedural filter for assuring that the fees will be limited to funding identified program needs. On this issue the City is assured by the Dept. that they will not be going to the Board on a regular basis for fee increases. This is a concern with the Board. Because the Dept. can approach the Board at any time for an increase. The Dept. will be participating actively in rule making before the Board for adoption of fees to make sure any increases in fees will be appropriate. The City appreciates the amendment on tonnage. The City regards tonnage to be a more exact measure of assessing fees and the City supports this amendment.

Will Selser, Lewis & Clark County, S.W.A.M. He agreed with the previous comments. If the process is applied appropriately, it would actually resolve into some reduced cost to their operations. The state has the ability to deal with the complex issues as solid waste facilities

eroded for lack of resources. If this does allow them to increase their capacities at the staff level, it will turn out to be a good thing for them and their clients.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JOHN BOHLINGER was wondering if SB 161 passed, would Montana become a collection point for out-of-state garbage or waste. **SEN. HARGROVE** did not believe that would happen. In fact, this bill might be a deterrent.

SEN. BOHLINGER further questioned what the statement, "repealing the moratorium on certain interstate transport of solid waste" means.

Jon Dilliard replied that the main reason for repealing that statute is it has in many courts across the U.S. been decided that prohibition of importation of waste across state lines is a violation of the U.S. Constitution of the U.S. Dormant Commerce Clause. Montana State has not been challenged as of this date, but in review, the state would not be successful if so challenged. He was doubtful that Montana would see much more imported waste than it does already. In early 1990, when the Environmental Protection Agency (EPA) revised the regulations for the disposal facility, it raised the bar and put all landfills on the same level as to how they must dispose of the waste and how to handle the waste. Because of this, there is not a significant difference in the disposal rates between one state and another. It would be questionable for an eastern state to pay the cost to ship it to Montana to dispose of it when the cost of disposal here would not be significantly lower.

SEN. DUANE GRIMES asked exactly who will be assessed these fees. **Jon Dilliard** reported that the fees are assessed to solid waste management facilities that are required to be licensed by the Department for disposal and management of solid waste.

SEN. GRIMES asked if there are any private solid waste management companies. **Jon Dilliard** responded that yes there are private facilities. There is a solid waste landfill in Missoula and there is one in the Great Falls area.

SEN. GRIMES inquired if there are any facilities in competition in those cities or is it regulated so that the facility in Missoula is the only one handling waste. **Mr. Dilliard** stated that in Missoula and Great Falls, there are no facilities in direct competition. However, there is nothing in the statutes that would prohibit competition.

SEN. GRIMES wondered how this might affect the interaction between existing facilities if the fee schedules could be different and how would this affect small entities.

{Tape : 3; Side : A; Approx. Time Counter : 0; Comments : Changed in the middle of Mr. Dilliard's answer.}

Mr. Dilliard explained that the fee schedule of the Department done through the rules would be uniform throughout the industry. The fees could be slightly higher or lower for each facility of the same type and size, but would be uniform across the board. The Department is not looking at drastic changes that would put anyone out of business.

SEN. GRIMES questioned if the Department had received any complaints from the smaller cities. **Mr. Dilliard** reported that they had not received any opposition. They had discussions

with various operators concerning this bill. Their concern has been, "what are we going to do." The Department has assured them that the intention of the bill, with the increased fees, would be to bring in expertise help to assist them. This has been acceptable.

SEN. GRIMES reiterated that the fee increase is to defray the cost of helping districts who are receiving maintenance and operation of the district. **Mr. Dilliard** answered that Section 1, (2) was added in the early 1990's when the fee structure was originally set up in the statutes. The reason for this was there was a requirement in the statutes that these districts, whenever they changed their fees, would have to have a series of public meetings concerning the change. The Legislature did not want to impose that same requirement on them just to raise their fees if they had to raise their fees to meet the new fees that were coming out at that time.

SEN. BOHLINGER returned to his original issue and asked if the environmental community had weighed in on this bill.

Mr. Dilliard has not heard anything from this group of people and have not had any significant interactions with them. The local health departments are well aware of this bill and have not expressed any concerns.

Closing by Sponsor:

SEN. HARGROVE closed.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON LOCAL GOVERNMENT**

Call to Order: By **CHAIRMAN MARK NOENNIG**, on March 6, 2001 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)

Rep. Jeff Mangan, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. John Esp (R)
Rep. Dennis Himmelberger (R)
Rep. Hal Jacobson (D)
Rep. Rick Laible (R)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Ken Peterson (R)
Rep. William Price (R)
Rep. James Whitaker (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

SB 161, SB 168, SB 178, 3/2/2001

Executive Action:

SB 161, SB 168, SB 175

HEARING ON SB 161

Sponsor: Senator Don Hargrove, SD 16

Proponents: John Dilliard, MT Dept. of Env. Quality
Frank Crowley, City of Billings
Will Selser, Lewis and Clark County

Opponents: None

Opening Statement by Sponsor: Senator Hargrove, SD 16, introduced SB 161. This is a solid waste clean-up bill. The current statute was written in 1991 and a lot of things have happened since that time and some of things were not all that great. The Solid Waste Management Act has a lot of duplication and inconsistencies, some because of practice and technology that has changed since 1991. Significantly, the statute as is exists was not done very well in the first place. The Department listed all the inconsistencies and the results reflected poorly on everyone. This bill allows us to revise solid waste fees. In 1991 one section called for fees and another section did not address fees. The new types of facilities such as composting, transportation of contaminated soil and weight versus volume, which was not done in 1991, needs to be addressed. The legislative review showed there was a desire for a flat fee and the authority for DEQ to set fees, both of which were addressed with last minute amendments. The 1991 bill had delayed effect dates that stretched into the next biennium and undid things that should have been done. This bill cleans up the mess by providing the DEQ authority, establishes the Board of Environment Review as the governing body for the Departments recommendations, and provides standard boiler plate to ensure the Department performs these duties in a responsible manner. It gets rid of the unconstitutional excess charge for out of state waste. This is included in the executive budget and the fees will be used for technical staff, hydrologists, engineers and that sort of thing. This really is just clarification of authority that is really needed. With that I will sit down and reserve the right to close. *{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.7}*

Proponents' Testimony: John Dilliard, DEQ, Read and Submitted written testimony. See Exhibit 1. EXHIBIT(loh51a01){Tape : 1; Side : A; Approx. Time Counter : 4.7 - 13}

Frank Crowley, City of Billings. The City of Billings is here as a proponent only after conferring with the DEQ. I will make my comments very short because I think that Mr. Dilliard summarized

this bill very well. Some of the changes that I think are very appropriate and timely is designating the Board of Environmental Review as the forum where fees can be acted upon. It has worked very well for all parties to sit down with the Department and coming to an agreement before presenting the facts to the Board for final approval. The city of Billings does not take any fee increases lightly, as they are the largest landfill in the State of Montana and therefore are charged the most. We have brought two amendments, one is to address the need for qualified technical staff to work with a regulated community on these fairly complex issues. The Department has assured us they are going to make one of their priorities getting in house expertise to provide reliable responses to the issues. The second is the amount of fee increase

that maybe precipitated over the next biennium. I don't believe that the Department is proposing any FTEs in the current budget, but some of the base adjustment issues and data conversions are going to necessitate a further fee to be imposed on the regulated community. The fees are imposed by tonnage. We have asked the Department to limit their increase to ten percent. They could not limit it right now but have established the ten percent as a basic goal. **EXHIBIT(loh51a02){Tape : 1; Side : A; Approx. Time Counter : 13 - 16.6}**

Will Selzer, Solid Waste Manager for Lewis and Clark County. Indicated that Lewis and Clark County concur with Mr. Crowley's comments, we to stand in support of this bill with the two amendments, one that brings competent and technical personnel to the agency and assurance from the DEQ that increases are pegged at ten percent. *{Tape : 1; Side : A; Approx. Time Counter : 16.6 - 17.8}*

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: **Rep. Anderson** questions Frank Crowley. Mr. Crowley, in your testimony you said that the this would necessitate a ten percent increase in rates for the city of Billings, I assume that would apply to other areas. Mr. Crowley replied, that would be a fair assumption, this would cause an increase for everyone, because the fee is distributed pro rata across the state. **Rep. Esp** asked Will Selzer, You indicated that you had the assurance from DEQ that fees are going to be the way they are for quite awhile, is that accurate? Will Selzer: No, when the DEQ personnel approached us their initial indication was they wanted to raise the rates ten percent. This bill has evolved quite different from those original discussions, most of it in a positive direction, the ten percent was indicated by the state and we want to be on record as saying that ten percent was the figure mentioned for the increase. We can support the bill as long as that does not get out of hand. **Rep. Esp** asked if there was anything in this bill that would prevent the Dept from raising the fees. Selzer replied there is nothing directly in the bill other than they have to go through a process with the Board of Environmental Review and that is a more frequent process than coming to the legislature every other year. They now can come to the Board oftener under this bill. I do not know that it is any easier to get an increase from the Board. There is nothing in this bill that locks the fees in. **Esp** asks if the public has input into the Board's decision. Selzer answered - Yes, very much so. **Rep. Peterson** asked Mr. Crowley why is the DEQ setting the fees for Billings landfill? Crowley replied-if my comments indicated that was the case, I certainly want to clear up that notion. The DEQ does not set the fees for Billings landfill. The City of Billings sets the rates for the landfill, using a composite of all the expenses it has in running the landfill. The legislature made a determination a few years ago that the solid waste program should be funded by fees. Once the legislature gave that authority to the DEQ, the DEQ notified all of the landfill offices saying we are now going to be fee funded and you will be charged based upon your volume of your waste. Basically, the bigger you are the more you will pay to us. What DEQ sends to the City of Billings every year is a bill. Billings incorporates that expenses into the fee formula. **Peterson**, what does the City of Billings get from DEQ for the fees they pay? Crowley, that

could be a very short answer or very long one, I would not say nothing, I think the federal and state requirements for landfill operations are necessary in order to protect the public health and the environment. There has to be an agency to monitor, inspect, provides information, does some educational processes and in general supervises the administration of those state requirements. If state requirements are not enforced the federal requirements apply directly, I would also suggest Mr. Dilliard or Mr. Selzer might be able to answer your question. **Rep. Peterson** asked Mr. Dilliard: Would you respond to the question I asked Mr. Crowley? Dilliard stated in short they get regulated by the Dept through the statutes and rules, they also get technical assistance as they request. We conduct two inspections a year to review how they are complying with regulations and consult with them at that time to correct any problem areas. The Agency provides training for landfill operators and helps fund the Department that works on the solid waste management plan, which is a global plan for the state. **Rep. Peterson**, do you issue citations if they are not in compliance? Dilliard, no we do not have the authority to issue citations, we can go through an administrative order process or proceed with enforcement action, we do not have citation authority. **Rep. Peterson**, can you give me some ballpark idea of how much the Billings landfill pays annually under the current fee structure? Dilliard, I am taking a guess, I think it is somewhere in the area of \$35,000.00 to \$40,000.00 per year. **Rep. Peterson**, I understand that under this bill, you are trying to do some clean up, however this bill would give the Dept. power to set fees, right? Dilliard, It actually give the Board the authority to set fees. The Dept. would go to the Board with the suggested fees and then the Board is responsible for adopting, amending or denying the fees. **Rep. Peterson**, what is the procedure for setting those fees? Dilliard, As I explained, we go to the Board, who has final authority. The Board has its hearing, which is open to the Public and considers all input. **Rep. Peterson**, is there any limit on the fees the Board can set? Dilliard, No, I do not believe there is any limit, other than the statutes do require fees to be set on a reasonable basis. **Rep. Esp** to Dilliard, before we repeal a couple of sections of law because you said they were unconstitutional, why were those sections of law enacted. Dilliard, I do not know. I believe these laws were enacted to help stop Montana from becoming a dumping ground for others waste. That statute expired in 1993. **Rep. Noennig**, to Dilliard - you said that the statute requires the fees be reasonably related to the cost of operations, I can't find that in the bill? Dilliard, I think I can find that in the bill, if you will give me a second. I have been told it is in 75-10-125. It states starting in "A" these fees may include a license application fee that reflects the cost of reviewing a consolidated waste management substantial change to the existing facility, a flat annual license fee that reflects the minimal basis fee related to a fixed cost of annual inspection in license renewal and may be upon the categorization that goes into the other sections, I believe that is where I was thinking of, as we have to at least make certain that our fees are justifiable. **Rep. Noennig**; My problem is that I don't see that. When I am looking at line 13 on page 4, it says these fees may include... and as you indicated under section "A" they include a fee that reflects the cost of reviewing, so forth and then under "B" a flat fee that is based upon..., I am not sure, cost that is reasonably related to a categorization. I am not sure I understand what that means and then under C it is a tonnage or volume based fee on solid waste disposal. I don't see any relationship back to anything. I does not look to me like there is any standard, am I missing that? Dilliard, I can not argue the question that it could be interpreted that way, however I know that was not what was intended. Our intent was to base the fee on the cost to the Department. **Rep. Noennig**, the total fee is a combination of those factors, is it your understanding that it needs to be related to the cost of the Department? Dilliard, Yes, that is correct. **Rep. Laible**, Mr. Dilliard, in your testimony

regarding the City of Billings, they do annual on site inspections, to check new operations, etc. In that area you were just discussing, does this reflect the cost of the review? Dilliard, No, there are no additional fees other than those authorized by statute. **Rep. Mangan** Based on your previous discussion, No. 6, lines 21 through 23, the fees imposed by the Board must include a percentage of volume and weight. Is that how the fee is calculated. Dilliard, that is part of the base for justifying the fees. **Rep. Mangan**, does this coordinate with the Section 5? Dilliard, Yes. **Rep. Noennig**, maybe you want to refer this to the sponsor, the question I have is would you or the sponsor have an objection if we developed some language that made it clear that whole fee charge is related to the cost? Would that be an acceptable amendment. Dilliard, the Department would have no problem. **Sen. Hargrove**, I am sure that they would be alright, but you might check with Ms. McClure, this is addressed in administrative boiler plate and I don't know what section of law, but there is a requirement that all such transactions be reasonable and prudent and have appropriate justification. In addition, to the fact that the Board of Environmental Review is designed to be objective. *{Tape : 1; Side : A; Approx. Time Counter : 17.8 - 30} {Tape : 1; Side : B; Approx. Time Counter : 0 - 11.9}*

Closing by Sponsor: **Sen. Hargrove**, closed SB 161. Just a couple of things that were mentioned based on the questions, this is designed to save money. You have experts and I don't have to remind anyone with the problems we have with Environmental Quality, air, soil and water, etc. You are ensuring yourself that you are not inviting a lawsuit. The out of state fees would involve the larger landfills, such as the City of Billings. Their fee would be \$100,000.00, nobody has ever applied for or used one of these permits. Just doesn't happen. Again, this is a bill to save money and not have to address this every year. With the appropriate checks and balances I think this bill accomplishes that. **Rep. Younkin** to carry on the floor. *{Tape : 1; Side : B; Approx. Time Counter : 11.9 - 16.8}*

how to apply this statute, however for all practical purposes the Counties started doing this the first of the year, because they had no choice or guidance. This bill just makes it legal for the counties to take these actions. *{Tape : 2; Side : A; Approx. Time Counter : 24.6 - 26.5}*

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: **Rep. Liable** to Glaser: On page 12, it calls for 25 cents and later it mentions 50 cents for the pension fund. What is it doing in this bill? Glaser- this money flows that way and they are just working to clean up the transfers for the counties. This is pension money. **Rep. Lee** Nowhere in here is light vehicle defined, is it somewhere else in statute? Glaser- it is defined in other sections. **Rep. Esp** to Glaser - Does this set the fees on motorcycles? Glaser-No. The motorcycle fees are dealt with in another bill called the "Slick Willy" bill. *{Tape : 2; Side : A; Approx. Time Counter : 26.5 - 30}* *{Tape : 2; Side : B; Approx. Time Counter : 0 - 4}*

Closing by Sponsor: Sen. Glaser closed. *{Tape : 2; Side : B; Approx. Time Counter : 4 - 5}*

EXECUTIVE ACTION ON SB 161

Motion: REP. JACOBSON moved that SB 161 BE CONCURRED IN.

Discussion: Eddie McClure explains the effect of the bill and explains how the fee increases work. Agencies must justify the increase in fees. Rep. Younkin explained the Board of Environmental Review and the make up of the board. *{Tape : 2; Side : B; Approx. Time Counter : 5 - 18.5}*

Motion/Vote: REP. JACOBSON moved that SB 161 BE CONCURRED IN. Motion carried 15-3 with Esp, Liable and Anderson voting no. *{Tape : 2; Side : B; Approx. Time Counter : 18.5 - 19.1}*

EXECUTIVE ACTION ON SB 168

Motion: REP. MANGAN moved that SB 168 BE CONCURRED IN.

Motion/Vote: REP. NOENNIG moved that SB 168 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. MANGAN moved that SB 168 BE CONCURRED IN AS AMENDED. Motion carried unanimously. *{Tape : 2; Side : B; Approx. Time Counter : 19.1 - 23.1}*